

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7383 OF 2005

Shri Devrajan Rajayya Dikonde & Anr. ...Petitioners
V/s.

Shri Shankar Ashayya Kamtam & Ors. ...Respondents

Shri M.D. Parab for the Petitioners.

Shri A.A. Garge for Respondent Nos.1,2,3,6 and 7.

Shri P.I. Khemani, AGP for the State.

CORAM : V.M. KANADE, J.

DATED : MARCH 12, 2007

P.C. :-

1. Heard the learned Counsel for the petitioners and the learned Counsel for the respondents.

2. The petitioners are challenging the order passed by the District Court whereby the application for condonation of delay filed by the petitioners was rejected. Brief facts are that the petitioners had filed an application under Section 50A(i) of the Bombay Public Trusts Act, for framing a scheme in respect of Akhil Padmashali Samaj, Bhiwandi, before Assistant Charity Commissioner, Thane. The said application was allowed and the name of the new trustee was entered into the Register. The said application was disposed of since

it was allowed. The respondents filed an application challenging the said order. The District Court partly allowed the said application and set aside the impugned order and direction was given to the Charity Commissioner to dispose of the application which was pending before it. On 21.5.2003, the Charity Commissioner held that since the application was already disposed of and therefore, there was no question of passing any further order. In the meantime, the petitioners approached the Hon'ble High Court. This Court vide order dated 4.12.2003 observed that since the Application No.47/85 has already been disposed of by the Charity Commissioner, the appeal has become infructuous. This Court, however, granted liberty to the petitioners to challenge the order dated 21.5.2003 passed in Application NO.47/85.

3. Pursuant to the said direction given by this Court, the petitioners preferred an appeal before the District Court. He also filed an application for condonation of 85 days delay. This application was opposed by the respondents and it was contended that

there was delay of 130 days. It was submitted that no sufficient cause has been shown for condonation of delay. The District Court rejected the application. Being aggrieved by the said order, the petitioners preferred this appeal.

4. It is submitted that the petitioners had inadvertently earlier filed an appeal in this Court and after opportunity was granted by this Court, he approached the District Court and therefore, there was delay. It is also stated in the application that there was some personal problem and therefore, he could not approach in time.

5. The learned Counsel for the respondents, on the other hand, submitted that the delay was not properly explained and therefore, the petition be dismissed.

6. Considering the peculiar facts and circumstances of the case and particularly, the liberty which was granted by this Court earlier to the petitioners to approach the District Court, the District Court ought to

have taken into consideration that the delay was caused inadvertently and mainly because the petitioners had not approached the proper forum. in my view, this is a sufficient cause which is given by the petitioners. The impugned order, therefore, is liable to be set aside. The delay is condoned.

7. The District Court is directed to decide the appeal filed by the petitioners, as expeditiously as possible.

. Writ petition is allowed in the above terms.

(V.M. Kanade, J.)